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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DIEGO M. GALIETTI, an individual,

Plaintiff,

vs.

Case No.: 2:21-cv-2034-APG BNW

WESTERN PROGRESSIVE-NEVADA, INC.;
CITIBANK, N.A., as Trustee of the American
Home Mortgage Investment Trust 2004-3,
Mortgage Backed Notes, Series 2004-3; and DOES
I THROUGH X inclusive; and ROE
CORPORATION XX through XXX, inclusive,
Defendants.

MOTION TO EXTEND TIME

(First Request)

On May 24, 2022 and May 25, 2022, this Court granted two stipulations in docket nos. 43 and 45 to extend time. In both stipulations, Wright, Finlay & Zak, LLP and Ramir M. Hernandez, Esq. made general appearances on behalf of defendant CITIBANK, N.A., as Trustee of the American Home Mortgage Investment Trust 2004-3, Mortgage Backed Notes, Series 2004-3. Plaintiff believes this constitutes a waiver of service of process as the Amended Complaint and Summons were duly sent via the Court's electronic mailing system when they were filed and were sent via a separate electronic mailing to attorney Ramir M. Hernandez, Esq. on May 31, 2022. "A general appearance or responsive pleading by a defendant that fails to dispute personal jurisdiction will waive any defect in service or personal jurisdiction." *Benny v.*

1 *Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) (citations omitted), *amended on other grounds*, 807
 2 F.2d 1514 (9th Cir. 1987).

3 Nevertheless, out of an abundance of caution, Plaintiff is filing this Motion to Extend
 4 Time to Serve the summons and amended complaint for an additional 60 days¹. Plaintiff
 5 contacted counsel for defendants requesting a stipulation to extend time or to sign an acceptance
 6 of service. Counsel for defendants stated that he did not have authority to do either.

7
 8 FRCP 6(b) states:

9 (b) Extending Time:

10 (1) In General.

11 When an act may or must be done within a specified time, the court may, for good cause, extend
 the time:

12 (A) With or without motion or notice if the court acts, or if a request is made, before the
 original time or its extension expires; or

13 (B) On motion made after the time has expired if the party failed to act because of
 excusable neglect.

14 The Ninth Circuit has held in Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1258-59
 15 (9th Cir. 2010) that Fed. R. Civ. P. 6(b)(1) “ ‘[is] to be liberally construed to effectuate the
 16 general purpose of seeing that cases are tried on the merits.’ *Rodgers v. Watt*, 722 F.2d 456, 459
 17 (9th Cir.1983) (quoting *Staren v. American Nat'l Bank & Trust Co. of Chicago*, 529 F.2d 1257,
 18 1263 (7th Cir.1976)); *see also* Fed.R.Civ.P. 1 (“[The Federal Rules] should be construed and
 19 administered to secure the just, speedy, and inexpensive determination of every action and
 20 proceeding.”). Consequently, requests for extensions of time made before the applicable deadline
 21 has passed should “normally ... be granted in the absence of bad faith on the part of the party
 22
 23
 24
 25

26 ¹ This Court ordered Plaintiff to serve defendant CitiBank, N.A. on or before 21 days after the filing of the
 27 amended complaint. This Order was entered as docket no. 36.

1 seeking relief or prejudice to the adverse party.” 4B Charles Alan Wright & Arthur R.
 2 Miller, *Federal Practice and Procedure* § 1165 (3d ed. 2004).” Id.

3 In this case, given the general appearance by Defendant CITIBANK, N.A., as Trustee of
 4 the American Home Mortgage Investment Trust 2004-3, Mortgage Backed Notes, Series 2004-3,
 5 Plaintiff believes that service of process has already been effectuated or waived by Defendant.
 6 Nevertheless, based on the above, Plaintiff believes that good cause exists to extend time to serve
 7 the Defendant CITIBANK, N.A., as Trustee of the American Home Mortgage Investment Trust
 8 2004-3, Mortgage Backed Notes, Series 2004-3 via traditional means. Plaintiff requests 60 days
 9 to do so.
 10

11 Dated this 31st day of May 2022.

12 /s/ Randal R. Leonard, Esq.
 13 RANDAL R. LEONARD, ESQ.
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 16 Las Vegas, Nevada 89102
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 19 Attorney for Plaintiff

20 **ORDER**

21 For good cause shown, IT IS ORDERED that
 22 ECF No. 46 is GRANTED.

23 IT IS SO ORDERED

24 DATED: 8:50 am, June 03, 2022

25 

26 BREND A WEKSLER
 27 UNITED STATES MAGISTRATE JUDGE
 28

DECLARATION OF COUNSEL

Comes now the undersigned counsel and states the following under penalty of perjury:

1. I am the counsel for the Plaintiff herein.
2. In and around the 23rd and 24th of May 2022, I entered into two stipulations to extend time to answer the amended complaint filed herein and to file a supplemental brief as directed by this Court pursuant to an Order entered as docket no. 36.
3. Counsel for Defendant Western Progressive Nevada, LLC stated that he and his firm was also representing CITIBANK, N.A., as Trustee of the American Home Mortgage Investment Trust 2004-3, Mortgage Backed Notes, Series 2004-3 ("CITIBANK") as well and specifically included CITIBANK in the stipulation to extend time to answer the amended complaint and file a supplemental brief.
4. My understanding was that CITIBANK wanted to appear and participate in the filing of the supplemental brief that was to be filed as well as participate in possible settlement negotiations.
5. No mention was made regarding preserving the ability to object to jurisdiction or service of process as required by FRCP 12(h) and therefore these defenses should be waived.
6. Further your declarant sayeth naught.

Dated this 31st day of May 2022.

/s/ Randal R. Leonard, Esq.
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that on this this 31st day of May 2022, I did cause a true copy of **MOTION TO EXTEND TIME** to be e-served through the Court's e-filing electronic notice system to the attorney(s) associated with this case.

WRIGHT, FINLAY & ZAK, LLP

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Nevada Bar No. 12448

Ramir M. Hernandez, Esq.

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Attorneys for Defendants Western Progressive-Nevada, Inc. and CITIBANK, N.A., as Trustee of the American Home Mortgage Investment Trust 2004-3, Mortgage Backed Notes, Series 2004-3

/s/ Randal R. Leonard, Esq.
RANDAL R. LEONARD, ESQ.